AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 – EXPEDITED PROCEDURE
Serial Number: 10/721,753
Filing Date: November 26, 2003
Title: SYSTEM AND METHOD FOR REMOTE MANAGEMENT OF COMMUNICATIONS NETWORKS

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Dkt: 1370.215US1

REMARKS

This responds to the Final Office Action mailed on <u>February 22, 2008</u>. Claims 1, 9, 12, and 16 are amended, and 22 claims are now pending in this application. Support for the claim amendments may be found, *inter alia,* as set out below:

Amendments to claim 1 finds support in the original application at ¶20.

Amendments to claim 9 finds support in the original application at ¶22 and FIG. 1.

Amendments to claim 12 finds support in the original application at ¶22 and FIG. 1.

Amendments to claim 16 finds support in the original application at ¶22 and FIG. 1.

§103 Rejection of the Claims

Claims 1-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagaoka et al. (U.S. Patent No. 6,651,174) in view of Crichton et al. (U.S. Patent No. 6,104,716). Applicants respectfully traverse and amend so as to clarify the claim language. MPEP 2143.03 requires that: "All words in a claim must be considered in judging the patentability of that claim against the prior art." Amended claim 1 recites limitations that include:

> *configuring a first control unit* inside a first firewall <u>to control the network</u>;
> *configuring a proxy server* outside the first firewall; (emphasis added in italics)

By contrast, Nagaoka et al. states:

> In company A, firewall 35.sub.A corresponds to firewall 35 in FIG. 1, and has a port P.sub.A. This port P.sub.A is given a port number of #80, and this port is set for the access of an unspecified large number of client terminals. In actuality, a plurality of logic ports are provided in firewall 35.sub.A, and the port numbers of these ports may be freely set. However, in the explanation which follows, the only port which is employed is that which has the port number #80.

> Reference 34.sub.1A indicates a public server corresponding to the WWW server 34 shown in FIG. 1, and this is accessed by client terminal 30.sub.1 via internet 1 and firewall 35.sub.A. Reference 34.sub.2A indicates a private server corresponding to the WWW server shown in FIG. 1, and this is accessed by an authorized client terminal 30.sub.2 via internet 1 and firewall 35.sub.A (port P.sub.A) by means of dedicated protocols described herein below. Here, the server application program 38 shown in FIG. 1 is stored in the storage unit of public server 34.sub.1A and private server 34.sub.2B.

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Client terminal 21.sub.A is located within company A, and accesses both public server 34.sub.1A and private server 34.sub.2A.[1]

The above cited portion of Nagaoka et al. is silent as to "*configuring a first control unit* inside a first firewall to control the network" and "*configuring a proxy server* outside the first firewall," as recited in independent claim 1. Further, Crichton et al. is silent[2] as to the above cited limitations of claim 1. Accordingly, the requirements of MPEP 2143.03 have not been met and a *prima facie* case of obviousness has not been established. Applicants respectfully request the examiner withdraw her rejection under 35 U.S.C. § 103(a).

As articulated above, Nagaoka et al. in view of Crichton et al. are silent as to all the limitations of amended claim 1. Accordingly, Applicants submit that amended claim 1 is allowable. Further, claims 2 through 8 depends upon amended claim 1.[3] Accordingly, Applicants submit that claims 2 through 8 are also allowable.

With respect to the examiner's rejection of claim 3, Applicants respectfully traverse. MPEP 2144.03 states:

> In certain circumstances where appropriate, an examiner may take official notice of facts not in the record or rely on "common knowledge" in making a rejection, however such rejections should be judiciously applied.

Further, MPEP 2144.03 goes on to state:

> It would <u>not</u> be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. (emphasis in the original)

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[1] Nagaoka et al., Col. 7, lines 1-20. *See generally* Final Office Action Response dated February 22, 2008 (hereinafter Office Action), pgs. 5-6 ("i. Configuring a first control unit inside a first firewall (column 7, lines 1-20 and FIG. 1); ii. Configuring a proxy server outside the first firewall (column 7, lines 1-20 and FIG. 1); and iii. Establishing a session between the first control unit and the proxy server, wherein establishing the session is executed using an access key (column 7, lines 1-20 and FIG. 1).").

[2] *See* Crichton et al., title ("Method and Apparatus for Lightweight Secure Communication Tunneling Over the Internet").

[3] *See generally* MPEP 2143.03 (If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Here, claim 3 recites, in part, "sending the access key and the identification information to the proxy server." With respect to this limitation, the examiner makes the following factual assertion: "However, generating access key in the first control unit was know [sic] and commonly practiced in the art at the time the invention was made."[4] This factual assertion has not been properly noticed and is not properly based upon common knowledge.[5] Examiner is invited to provide an affidavit[6] to show that substantial evidence[7] supports this factual assertion. In the alternative, the Applicants respectfully request the examiner withdraw her rejection under 35 U.S.C. § 103(a).

As to examiner's rejection of claim 6, Applicants respectfully traverse. Claim 6 includes the following limitations:

storing the first control unit identification information in the proxy server;
adding the first control unit as a first remote device;

With respect to these limitations, the examiner states:

However, storing the first control unit identification information and adding the first control unit as a first remote device was know [sic] and commonly practiced in the art at the time the invention was made.[8]

As with claim 3, this factual assertion has not been properly noticed and is not properly based upon common knowledge.[9] Examiner is invited to provide an affidavit[10] to show that substantial evidence[11] supports factual assertion. In the alternative, the Applicants respectfully request the examiner withdraw her rejection under 35 U.S.C. § 103(a).

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[4] *See* Office Action, pg. 7.
[5] *See* MPEP 2144.04.
[6] *See id.* ("If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding.")
[7] *See* MPEP 2144.03. ("The standard of review applied to findings of fact is the "substantial evidence" standard under the Administrative Procedure Act (APA).").
[8] *See* Office Action, pg. 8.
[9] *See* MPEP 2144.04.
[10] *See* supra note 6.
[11] *See* supra note 7..

With respect to the examiner's rejection of claim 9, Applicants amend so as to clarify the claim language. Amended claim 9 includes a limitation that recites:

> a proxy server located outside the first fire wall <u>and implemented within a De-Militarized Zone (DMZ) between the first enterprise network and the public network</u>, the first control unit being configured with proxy server information, the proxy server being configured with first control unit information, the first control unit being further configured to send a first access key to the proxy server, the first control unit and the proxy server configured to establish a communication session based on the first access key, the proxy server to aggregate and store performance data provided by the first control unit.

The combination of Nagaoka et al. and Crichton et al.[12] is silent as to this limitation. For example, the amended portion of amended claim 9 states "a proxy server . . . <u>implemented within a De-militarized Zone (DMZ) between the first enterprise network and the public network.</u>" Applicants respectfully request the examiner withdraw her rejection under 35 U.S.C. § 103(a).

As articulated above, Crichton et al. in view of Lomet et al. are silent as to all the limitations of amended claim 9. Accordingly, Applicants submit that amended claim 9 is allowable. As claims 10 through 11 depend upon amended claim 9, Applicants submit that claims 10 through 11 are also allowable.

Claims 16, 18, 19, and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Crichton et al. (U.S. Patent No. 6,104,716) in view of Lomet et al. (U.S. Patent No. 6,182,086). Applicant amends so as to clarify the claim language. Amended claim 16 states:

> a proxy server coupled to the first console, the proxy server configured to pool the at least one request, and to provide access from at least one console to the first control unit<u>, the proxy server implemented within a De-Militarized Zone (DMZ) between a protected network and the unprotected public network</u>;

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[12] *See* Nagaoka et al., title ("Firewall Port Switching"); Crichton et al., title ("Method and Apparatus for Lightweight Secure Communication Tunneling Over the Internet").

The combination of Crichton et al.[13] in view of Lomet et al.[14] is silent as to "the proxy server implemented within a De-Militarized Zone (DMZ) between a protected network and the unprotected public network." Applicants respectfully request the examiner withdraw her rejection under 35 U.S.C. § 103(a).

As articulated above, Crichton et al. in view of Lomet et al. are silent as to all the limitations of amended claim 16. Accordingly, Applicants submit that amended claim 16 is allowable. As claims 17 through 20 depend upon amended claim 16, Applicants submit that claims 17 through 20 are also allowable.

As to claim 21, Applicants respectfully traverse. Claim 21 includes the following example limitations:

> creating a request object;
> adding the request object to a pool; and
> notifying a control unit of the request object.

With regard to claim 21, the examiner generally cites FIG. 8 of Crichton et al.[15] in combination with Lomet et al. FIG. 8 of Crichton et al, and the description thereof, is silent as to the above cited limitations of claim 21. For example, FIG. 8 states:

> The middle proxy flow diagram is shown in FIG. 8. *The process begins by checking in decision block 801 whether there is a new connection from a neighboring proxy.* If so, the new connection is accepted in function block 802, and then a determination is made in decision block 803 as to whether a matching COMMONUNIQUE.sub.-- INFO message is stored from a previous connection. If not, the COMMONUNIQUE.sub.-- INFO and TOPOLOGY.sub.-- EXCHANGE messages are stored at the middle proxy in function block 804 and the process returns to decision block 801 to await a new connection.[16]

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[13] *See* Crichton et al., title ("Method and Apparatus for Lightweight Secure Communication Tunneling Over the Internet").

[14] *See* Lomet et al., title ("Client-Server Computer System with Application Recovery of Server Applications and Client Applications").

[15] *See* Office Action, pg. 14 ("ii. Creating a request object (FIG. 8); ii. Adding the request object to a pool (FIG. 8); and iii. Notifying a control unit of the request object (FIG. 8)").

[16] Crichton et al, Col. 8, lines 24-33 (emphasis added).

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Based upon the above cited example language, FIG. 8 relates to a making a determination of *"a new connection from a neighboring proxy."* FIG. 8 is silent as to the above cited limitations of claim 21. Applicants respectfully request the examiner withdraw her rejection under 35 U.S.C. § 103(a).

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagaoka et al. (U.S. Patent No. 6,651,174) in view of Beurke et al. (U.S. Patent No. 6,360,273). Applicants amend so as to clarify the claim language. Amended claim 12 includes an amended limitation that recites:

> a proxy server, implemented within a De-militarized Zone (DMZ) between the first enterprise network and the public network, that includes at least one of a client request handler, a shared request object pool, or a server request handler.

The combination of Nagaoka et al. in view of Beurke et al.[17] is silent as to the above cited limitation. Applicants respectfully request the examiner withdraw her rejection under 35 U.S.C. § 103(a).

As articulated above, Nagaoka et al. in view of Beurke et al are silent as to all the limitations of amended claim 12. Accordingly, Applicants submit that amended claim 12 is allowable. As claims 13 through 15 depend upon amended claim 12, Applicants submit that claims 13 through 15 are also allowable.

Claims 13-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nagaoka et al. (U.S. Patent No. 6,651,174) in view of Beurke et al. (U.S. Patent No. 6,360,273) and further in view of Crichton et al. (U.S. Patent No. 6,104,716). Applicants respectfully traverse. Similar to the rejections of claims 3 and 6 above, here with respect to claims 13 and 15 the examiner states:

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[17] *See* Nagaoka et al., title ("Firewall Port Swtiching"); Beurke et al., title ("Method for Collaborative Transformation and Caching of Web Objects in a Proxy Network").

However, storing the first control unit identification information and adding the first control unit as a first remote device was know [sic] and commonly practiced in the art at the time the invention was made.[18]

Again, as with claims 3 and 6, the above factual assertion has not been properly noticed and is not properly based upon common knowledge.[19] Examiner is invited to provide an affidavit[20] to show that substantial evidence[21] supports factual assertion. In the alternative, the Applicants respectfully request the examiner withdraw her rejection under 35 U.S.C. § 103(a).

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Crichton et al. (U.S. Patent No. 6,104,716) in view of Lomet et al. (U.S. Patent No. 6,182,086) and further in view of Nagaoka et al. (U.S. Patent No. 6,651,174). Applicants amend so as to clarify the claim language. As stated above with respect to amended claim 16,[22] the combination of Crichton et al. in view of Lomet et al. does not teach all the limitations of amended claim 16. Amended claim 16 is allowable. As claim 17 depends upon amended claim 16, claim 17 is also allowable.

Claims 20 and 22 rejected under 35 U.S.C. § 103(a) as being unpatentable over Crichton et al. (U.S. Patent No. 6,104,716) in view of Lomet et al. (U.S. Patent No. 6,182,086) and further in view of Nelson (U.S. Patent No. 6,553,422). With respect to claim 20 Applicants amend so as to clarify the claim language. As stated above with respect to amended claim 16,[23] the combination of Crichton et al. and Lomet et al. does not teach all the limitations of amended claim 16. Amended claim 16 is allowable. As claim 20 depends upon amended claim 16, claim 20 is also allowable.

With respect to claim 22 Applicants amend so as to clarify the claim language. As stated above with respect to amended claim 21,[24] the combination of Crichton et al. and Lomet et al.

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[18] Office Action, pgs. 16 and 18.
[19] *See* MPEP 2144.04.
[20] *See* supra note 6..
[21] *See* supra note 7.
[22] *See* supra pg. 11.
[23] *See id.*
[24] *See* supra pg. 12.

does not teach all the limitations of amended claim 21. Amended claim 21 is allowable. As claim 22 depends upon amended claim 21, claim 22 is also allowable.

Reply to Examiner's Statements

With respect to claim 9, Applicants respectfully disagree with examiner's analysis. Applicants restate the arguments made above with respect to amended claim 9.[25]

As to claim 3 Applicants respectfully disagree with examiner's analysis. Applicants restate the arguments made above with respect to claim 3.[26]

With regard to claim 8 Applicants respectfully disagree with examiner's analysis. Applicants restate the arguments made above with respect to claim 8.[27]

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[25] *See* supra pg. 11.
[26] *See* supra pg. 9-10.
[27] *See id.*

CONCLUSION

Applicants respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney (408) 278-4057 to facilitate prosecution of this application.
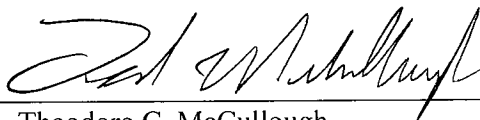
If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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